

**THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

Justine Moore,  
Plaintiff

v.

Merchants & Medical Credit  
Corporation, Inc.,  
Defendant

Docket No. 3:21-cv-01724-MEM  
(Judge Malachy E. Mannion)

ELECTRONICALLY FILED

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**RESPONSE TO DEFENDANT'S COUNTER-STATEMENT OF  
FACTS**

In its answer to Plaintiff's Statement of Undisputed Material Facts, Defendant has asserted a Counter-Statement of Facts. The local rules do not permit the filing of a Counter-Statement of Facts, instead merely permitting a party to file a *response* to the Statement of Undisputed Material Facts proffered by the moving party. Thus, Defendant's Counter-Statement of Facts should not be considered. However, to avoid any argument that Plaintiff consents to the statements advanced by Defendant, Plaintiff responds as follows:

1. Admitted.
2. Admitted.

3. Denied. The evidence referenced to support this paragraph contradicts the testimony of Defendant's designee, who testified that Defendant does not know what Hatteras does with the information after it is transmitted to Hatteras:

12 Q.	Okay. And what happens with the file once it
13	is transmitted to Hatteras?
14 A.	You would have to ask Hatteras.
15 Q.	So Merchants & Medical doesn't know what
16	Hatteras does with the information after it's
17	transmitted to Hatteras?
18	MS. OLSON: Objection. Form and
19	foundation.
20 A.	I don't know what their procedures are exactly.
21 Q.	Is there anyone at Merchants & Medical who
22	would know what their procedures are?
23 A.	Not to my knowledge.

(Church Dep. at p. 30:12-23.) A contradictory affidavit produced for summary judgment violates the sham-affidavit doctrine. *Daubert v. NRA Group, LLC*, 861 F.3d 382 (3d Cir. 2017).

4. Denied. The evidence referenced to support this paragraph contradicts the testimony of Defendant's designee, who testified that there is no written agreement between Defendant and Hatteras.

6 Q. And have you ever seen a contract between  
 7 Merchants & Medical and Hatteras?  
 8 A. We don't -- we do not have a -- we don't have a  
 9 contract with them.  
 10 Q. Okay. Without a contract, how do you determine  
 11 the amount that Merchants & Medical has to pay  
 12 Hatteras for the sending of a letter?  
 13 A. That information was negotiated -- most prices  
 14 were negotiated with the owner.  
 15 Q. But you don't think they were ever memorialized  
 16 into a contract?  
 17 A. I've been told that they were not.

(Church Dep. at p. 42:6:17.) It would thus be contradictory for Defendant to now state with certainty that any limitations exist regarding how Hatteras can use the information. Furthermore, any such limitations clearly could not be contractual or enforceable. A contradictory affidavit produced for summary judgment violates the sham-affidavit doctrine. *Daubert v. NRA Group, LLC*, 861 F.3d 382 (3d Cir. 2017).

5. Denied as stated. It is admitted that Plaintiff understood that she would receive statements regarding her Kohl's card, and that she understood that Kohl's would share her information in order to allow her to obtain a credit card.

6. Denied, as the evidence cited by Defendant does not support this allegation. However, Plaintiff's claim is premised on the conveyance

of information by Defendant to Hatteras, not to an employee of Hatteras.

7. Denied. It is undisputed that Hatteras received and used Plaintiff's personal information to prepare the collection letter to her.

8. Admitted with the following qualification: Plaintiff believes that her information was shared by Defendant with Hatteras.

9. Admitted with the following qualification: Plaintiff information was shared by Defendant with Hatteras.

s/ Brett Freeman  
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